SUMMARY of COOPERATIVE CASES

FARM CREDIT ADMINISTRATION
U. S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C.

SUMMARY NO. 57 SEPTEMBER 1953

UNITED STATES DEPARTMENT OF AGRICULTURE
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Prepared for the

COOPERATIVE RESEARCH AND SERVICE DIVISION

by the

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under the direction of

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The comments on cases reviewed herein represent the personal opinion of the author and not necessarily the official views of the Department of Agriculture.

TAXATION OF REVOLVING FUND CERTIFICATES

(B. A. Carpenter, Petitioner, v. Commissioner of Internal Revenue, Respondent, 20 T.C. No. 82)

In this case the Tax Court held that amounts retained by a cooperative association at the sole discretion of the board of directors for capital purposes for which revolving fund certificates were issued to members in payment of patronage dividends were not income of the members in the year issued, where the certificates bore no interest, were retirable at the sole discretion of the directors, were subordinate to all other debts of the cooperative and had no fair market value.

The court took the view that (1) the certificates had no fair market value when issued and (2) simply because the amounts were excludable in computing the cooperative's tax, it did not follow that the certificates were taxable to the members in the year of issue. The cases of William A. Joplin, Jr., et al., v. Commissioner of Internal Revenue (See Summary No. 54, p. 8) and P. Phillips v. Commissioner of Internal Revenue (See Summary No. 54, p. 1) are distinguished.

The Tax Court also held that stock in another corporation purchased by a cooperative on behalf of its members out of earnings of the cooperative is taxable as income of the members in the year in which the purchase was consummated rather than in the year of actual receipt of the stock certificates by the members.

Excerpts from the Court's opinion, promulgated June 15, 1953, follow:

"The Commissioner determined the following deficiencies in income tax of the petitioner:

Taxable Year Ended February 28	Deficiency
1946	$1,103.40
1947	2,430.08
1948	2,450.96
1949	544.00

"The issues for decision are:

"1. Whether the Commissioner erred in adjusting upward the petitioner's income by amounts representing his proportionate share in revolving fund certificate issued by a fruit growers cooperative to a partnership of which he was a member and by the amounts of such certificates issued directly to him;

"2. Whether the Commissioner erred in increasing the petitioner's income for the year ended February 28, 1949, by the amount of stock

in Pasco Packing Company allegedly received by the petitioner in that year; and

"3. Whether the deficiency for the year ended February 28, 1947, is barred by the limitations imposed by section 275 (a), Internal Revenue Code."

* * * * * *

"FINDINGS OF FACT

"The stipulated facts are so found and incorporated herein by reference.

"The petitioner resides at Orlando, Florida. He filed the returns in question on the cash basis for fiscal years ending February 28 with the collector of internal revenue for the district of Florida.

"'During the period involved, the petitioner and a partnership of which he was a member, were both members of Fosgate Growers Cooperative, (hereinafter called the Cooperative), incorporated under the Florida laws for the formation and operation of an agricultural cooperative association. The Cooperative was an exempt cooperative under section 101(12) of the Internal Revenue Code. The petitioner and the partnership marketed their fruit through the Cooperative. The Cooperative, in accordance with the terms of its agreement with the petitioner and the partnership, as evidenced by the members crop agreement, its articles of incorporation, and its by-laws, deducted from their fruit settlements various amounts in the taxable years for which revolving fund certificates were issued and delivered to the petitioner and the partnership.

"The articles of incorporation of the Cooperative authorized its directors to establish and accumulate reserves out of earnings, including a permanent surplus fund as an addition to capital. The Cooperative's by-laws authorized the directors to deduct from the proceeds of the sale of patrons' products amounts necessary to maintain adequate reserves and for other capital purposes and provided that such retained amounts be evidenced by revolving fund certificates of the type issued to the petitioner and the partnership. The directors were further authorized to pay patronage dividends in such certificates or in cash according to the discretion of the directors, and pursuant to the by-laws, the petitioner and the partnership agreed that should the directors determine to pay patronage dividends in certificates in lieu of cash, they would accept such payment.

"The revolving fund certificates issued to the petitioner and the partnership provided that they were entitled to the amounts shown on the certificates on account of deductions for patronage refunds

for revolving fund purposes, subject to the following conditions:

> "1. This and other revolving-fund certificates of the same series are retirable in the sole discretion of the Board of Directors of Fosgate Growers Cooperative, either fully or on a pro rata basis, but certificates issued in prior years shall be entitled to priority (except as hereinafter provided) in retirement.
>
> "2. The amount stated in this certificate shall bear no interest.
>
> "3. This certificate is transferable only on the books of said association after the express consent of the Board of Directors of said association to such transfer has been first had and obtained.
>
> "4. This and other certificates shall be junior and subordinate to all other debts of said association, both secured and unsecured. Upon the winding up or liquidation of said association in any manner, after full payment to all of its other creditors, all revolving-fund certificates shall then be retired in full or on a pro rata basis, without priority.

"An outstanding loan agreement and mortgage between the Cooperative and the Columbia Land Bank provided that the Cooperative could redeem the certificates only upon the written approval of that Bank.

"The petitioner in his income tax returns for the years in question did not report as taxable income the amounts of the revolving fund certificates issued to him or his share in the amounts of such certificates issued to the partnership.

"Prior to March 1, 1949, the Cooperative had paid nothing on the certificates. On October 6, 1949, it did pay 25 per cent of the face amount of the series of 1944, and on October 16, 1950, it made another 25 per cent payment on that series. These payments were made with the consent of the Columbia Land Bank and were reported by the petitioner and the partnership in the fiscal years of their receipt.

"There have been no transfers on the books of the Cooperative of the revolving fund certificates issued by it. The petitioner has been unable to sell or borrow on the security of his certificates. The petitioner and the partnership, at the time of the hearing, still owned the certificates issued to them.

"The revolving fund certificates had no fair market value at the time they were issued.

"In the notice of deficiency sent to the petitioner the Commissioner increased the petitioner's taxable income by the amount of the revolving fund certificates issued to him and by the increase in his share of the partnership income resulting from the inclusion in the partnership ordinary net income of the face amount of the certificates issued to it.

"During the 1947-1948 crop season the Cooperative entered into an agreement with Pasco Packing Company whereby Pasco agreed to process 1,100,000 boxes of fruit for the Cooperative upon condition that the Cooperative buy $300,000 worth of Pasco stock. At the time of the stock purchase, (the exact date of which is not shown), it was the intention of the directors of the Cooperative to have the stock issued in one certificate and to hold it in an escrow account for its members. Before this could be accomplished the Cooperative decided to have the stock issued directly to its members and it gave Pasco directions to that end on May 10, 1949. The delay in issuing the Pasco stock was due solely to the mechanics of figuring each member's share. The petitioner did not know of the agreement between Pasco and the Cooperative. On May 31, 1949, the petitioner was notified by Pasco that he was entitled to receive capital stock in Pasco and on July 15, 1949, a certificate for 11.2 shares was delivered to him by registered mail. This certificate had a face value of $1,112.69. The petitioner returned the stock as though it was a cash receipt in the fiscal year ended February 28, 1950. The Commissioner determined the shares were taxable income in the prior fiscal year.

"The member's agreement between the petitioner and the Cooperative provided that any contract between the Cooperative and any agency utilized by the Cooperative shall be part of the member's agreement and binding on the parties."

"OPINION.

"TIETJENS, Judge: The Commissioner insists that the revolving fund certificates should be taxable at their face amount regardless of whether or not they had any fair market value at the time of their issuance. He argues that the Cooperative was under an obligation to distribute patronage dividends either in cash or certificates; that the petitioner by becoming a member voluntarily assented to this arrangement and pursuant thereto, when the directors determined to pay such dividends in certificates the petitioner should be treated as if he had actually received the dividends in cash and reinvested the cash in the Cooperative.

"Further, the Commissioner claims that by Bureau ruling and the decisions of this Court, cooperatives have been permitted to exclude the full amount of such allocated profits from income under conditions such as exist in this case. He continues, as a corollary, that he has included in the taxable income of the member the full

amount of allocated profits evidenced by certificates in the same year the exclusion is allowed. He maintains that the decisions of this Court have supported this result, but rejected the theory, by holding such income taxable to the members, but on the theory that it was received at fair market value. He concludes that 'Consistency and protection of the revenue support the Bureau contention that such proceeds are properly taxable at full face value.' In summary, 'It is the Commissioner's premise that the amounts represented by the certificates were in effect received and reinvested in the capital of the cooperative, since the amounts were used in the manner the petitioner had elected. In any event, the amounts were "constructively received" and reinvested by the petitioner.'

"The Commissioner cites United Cooperatives, Inc., 4 T.C. 93, and Colony Farms Cooperative Dairy, Inc., 17 T.C. 688, as cases illustrative of the proposition that the issuance of certificates or the use of earned margins as capital with the permission of the member are excludable from income by the cooperative when the cooperative is the petitioner here. When the member is the petitioner the cases cited are George Bradshaw, 14 T.C. 162; Harbor Plywood Corporation, 14 T.C. 158; P. Phillips, 17 T.C. 1027; Estate of Wallace Caswell, 17 T.C. 1190; and William A. Joplin, Jr., 17 T.C. 1526.

"The petitioner's position simply is that he received no taxable income by virtue of the issuance of the revolving fund certificates under any theory.

"Little would be gained by discussing the cases involving exclusion of patronage dividends by cooperatives. Whatever may be the virtues of consistency, it cannot always be attained. The cooperative and its patrons are different entities and we do not think it necessarily follows that what is excludible from the income of the cooperative, whether the cooperative be taxable or tax exempt, automatically becomes income to the member. See William A. Joplin, Jr., supra.

"We confine ourselves to the problem before us. Is the petitioner here taxable on any amount represented by the certificates issued by the Cooperative? The import of the decisions is that the member is not taxable unless the certificates have fair market value.

"Harbor Plywood Corporation, supra, and George Bradshaw, supra, are not too helpful. Both involved the time of accrual -- the Plywood case of credit memoranda issued to members where the income had been earned by the cooperative and would have been paid to the member but for the contingency of renegotiation, and the Bradshaw case of notes issued by a purchasing cooperative as patronage refunds. In our opinion, neither case has a direct bearing on the present question.

"In Estate of Wallace Caswell, supra, the cooperative, a tax exempt cooperative, distributed interest bearing certificates as well as

cash to patrons. The Commissioner contended that the patron had received property in addition to cash under section 111 (b) and had received and realized income to the extent of the fair market value of the certificates. We upheld this contention and found not only that the certificates had fair market value, but that 'the record gives no leeway for saying that such fair market value was less than face.'

"William A. Joplin, Jr., supra, was concerned with $25 par value preferred stock issued by the cooperative of a conceded fair market value of half its par value. Here again the decision was for the Commissioner, the Court finding, however, that the fair market value of the stock was the equivalent of its par value.

"That phase of P. Phillips, supra, which bears on our question involved a taxable cooperative which voluntarily issued certificates to its members much like the certificates here, except for the voluntary feature. We stated, at page 1029:

> "Dr. P. Phillips Cooperative voluntarily issued revolving fund certificates against the amounts retained from marketing operations. Those certificates had no fair market value and did not represent income to the recipients on that basis. The Cooperative never made the funds themselves subject to the demand of any member so that constructive receipt might apply. The funds belonged to and were retained by the Cooperative. They were not income of the members for 1946. Furthermore, if a member ever receives any cash or thing of value in lieu of the certificates, that will represent an additional 'amount realized' from the sale of his 1946 crop which will be taken into income at that later date if it represents unreported profit. The Commissioner has advanced no sound reason for including these amounts in the income of the petitioners for 1946.

"The Caswell, Joplin, and Phillips cases suggest that the patronage dividends are to be taxed or not taxed depending on whether or not they have a fair market value. We have found that the certificates with which we are dealing had no fair market value. Accordingly, they would not be taxable to the petitioner.

"The Commissioner, however, brushes fair market value aside and seems to stand on the theory either of 'constructive receipt' or 'assignment of income', though at the same time stating that the theories on which he proceeds are immaterial. As in Phillips, so here, we do not think the Commissioner has advanced any sound reason for including any amount represented by the revolving fund certificates in the petitioner's income. The petitioner never had any real dominion or control over the funds represented by the certificates. The decision to retain the funds in the business rested solely with the directors. The certificates themselves had no fair market value and we do not see that whether or not the

cooperative was obligated to issue such certificates adds anything significant to the situation. We decide for the petitioner on the first issue.

"On the issue involving the Pasco stock, the burden of showing the error of the Commissioner's determination that the stock constituted taxable income in the year ended February 28, 1949, rather than the succeeding year is on the petitioner. This burden, the petitioner contends has been met by proving that he was on the cash basis, that he had no knowledge of the contract to purchase the Pasco stock, and that he actually received the stock certificate in the year in which he reported it.

"The facts do not show the exact date on which the stock purchase was consummated by the parties, but it evidently was previous to the taxable year in which the petitioner reported the income since the transaction was entered into during the 1947-48 growing season. It is clear that the stock was not purchased by the Cooperative for itself, but was purchased on behalf of the members including the petitioner. The petitioner's agreement as a member provided that any contract between the Cooperative and any agency utilized by the Cooperative shall be a part of the member's agreement and binding on the parties. The contract between Pasco and the Cooperative which made provision for the stock purchase seems to us to have been such a contract. The intent of the Cooperative, as shown by the facts, was that the Pasco stock was to be held in an 'escrow account for its members'. This means to us that upon the purchase being made, the petitioner immediately became entitled to his proportionate share of the Pasco stock. That his exact share was not immediately determined is not significant -- that was merely a matter of arithmetical computation.

"The petitioner's actual knowledge of the transaction would not seem to be material. The contract with Pasco for the stock purchase was obviously for the benefit of the petitioner and the other members of the Cooperative and the Cooperative, pursuant to its original intent, was to hold the stock for the members, not for itself. In such a situation the Cooperative is a conduit for passing the stock on to its members. Cf. Dr. P. Phillips Cooperative, 17 T.C. 1003. And it seems fair to say that the Cooperative, in view of the provisions of the membership agreement referred to above, was an agent of the petitioner and the other members in making the stock purchase. It was not necessary for the Cooperative to obtain any ratification by its members before the contract with Pasco became binding. No contention is made to that effect or that the Cooperative exceeded its authority in making the contract.

"As we view the transaction, the petitioner's right to the stock ripened when the stock purchase was made. It did not depend upon actual issuance of the certificates by Pasco. Ownership of stock is not determined by the formality of registering and delivering stock certificates. W. F. Marsh, 12 T.C. 1083; Scientific

Instrument Co., 17 T.C. 1253. The petitioner's right became fixed at the time of the contract, which was before the year in which the stock certificate was actually delivered to the petitioner and returned as income by him. In effect, the entire transaction amounted to an appropriation for the proportionate benefit of each member of $300,000 of the earnings of the cooperative at the time the stock purchase was made.

"In these circumstances we think the petitioner has not met his burden of showing the Commissioner's determination to have been erroneous, and we hold for the Commissioner on this issue."

Four judges entered a dissent from the holding on the second issue.

The holding in this case should not necessarily be considered a precedent for the view the Tax Court might take of a case involving a taxable year beginning after December 31, 1951, when the new provisions regarding the taxation of exempt cooperatives became effective. Moreover, it seems quite likely that the Internal Revenue Service will not acquiesce in this decision. See the new regulations contained in section 29-22(a) - 23 of Regulation 111, as amended by T. D. 6014 (18 F.R. 3168) and issued June 3, 1953, as to the tax treatment by patrons of allocations received from cooperative associations.

INCREASING AUTHORIZED CAPITAL STOCK OF COOPERATIVE MARKETING ASSOCIATION UNDER KANSAS LAW

(Hill v. Partridge Cooperative Equity Exchange)

In Hill v. Partridge Cooperative Equity Exchange, 174 Kan. 5, 254 P. 2d 278, the question was as to the validity of an attempted increase in the capital stock of the association by the association's officers pursuant to an election had under the Kansas statute. The court held that at the election thereon two-thirds of the members did not vote affirmatively on the question of increasing the capital and that, therefore, the defendant's officers were without authority to increase the capital and should be enjoined from attempting to do so under the election had.

The facts showed that defendant was a cooperative marketing association acting under Kansas G. S. 1949, Chapter 17, Article 16. Plaintiffs were stockholders of the defendant. The association was organized on the "one man, one vote plan" and, accordingly, could increase its capital only by the affirmative vote of two-thirds of its members. At a special meeting of the board of directors on March 7, 1950, it was voted to increase the capital from $20,000 to $50,000 and a meeting of the stockholders was called for March 30, 1950, to vote on the matter. The by-laws prohibited voting by proxy but prescribed a procedure whereby absent members could vote by mail prior to the meeting. The association

considered that it had 121 members, so a favorable vote of 81 was needed. The election was held on March 30, 1950, and according to the report of the tally the "for" votes were 38 present and 43 mail, the "against" votes were 2 present and 6 mail, and 2 present and 2 mail were blank. On April 3, 1950, this result was certified to the Secretary of State. Thereafter plaintiffs brought this action to enjoin the proposed increase.

The main issues were whether the membership was actually 121 or some greater or lesser figure and whether certain of the votes included should have been excluded. On these issues the court said:

> "The record discloses in more than one place that the number of members of the corporation was 121, but there is no showing as to the number of shares owned by any member. It is obvious that more than 121 shares had been issued, otherwise there was no occasion to increase the capital and the number of shares. It is also obvious that if the correct number of shareholders was 121 and that 81 votes were required to increase the capital if any one vote was wrongly counted for the proposition the proposition was not adopted. Although sufficiency of seven ballots is challenged by appellants, we need not in the first instance consider all of the challenges. In his lifetime one William French was a stockholder. He died and his estate was finally settled in 1942, his heirs being found to be Marson Hugh French and Isabell French Parker, who never made any application for the issuance of new shares. The record of the corporation simply showed the stock to be held by the William French estate. Marson French and his sister had given a power of attorney to one R. French and he voted the stock in favor of the proposition. If it be conceded the power of attorney authorized the attorney in fact to vote any corporate stock belonging to his principals, the bylaws prohibited it and the stock should not have been counted. Under such a situation the proposition submitted did not receive the required vote.
>
> "Although the president of the corporation announced at the special meeting on March 30, 1950, that there was a total membership of 121, and he and the secretary so certified to the secretary of state, appellees now contend that the F. Z. Miller estate and the French estate should not be included as members; that if they are not the membership is 119 and even though the French vote be not counted there were 80 votes in favor of the proposition or a sufficient number. The record as abstracted is utterly silent with respect to the Miller estate, that is whether it was counted as a member, whether it was voted or how it was voted. Heretofore we have directed attention to the statute as to those an association such as the corporation is may admit as members, G.S. 1949, 17-1606. Appellees contend there is no provision therein that permits an estate to be a member. For present purposes we shall concede the two estates were ineligible to membership and should not have been counted in determining the number of members. However, it is to be noted that under the above statute there is no requirement that a member hold

any specified amount of stock. If otherwise qualified, he can be a member by holding stock. Appellants direct our attention to evidence that stock was issued to Ralph and Harvey Eisiminger, to Glen and Avice Havercroft, and to W. A. and Lester Love, the several pairs being counted as three memberships. They contend that each person should have been counted and the membership roll increased by three. They also contend the French heirs should be counted as members. According to the testimony, the French heirs do not appear on the corporation stock list and have had no shares issued to them and this contention cannot be sustained. The same testimony however discloses that each of the six persons named in pairs does appear as a stockholder and member even though the Eisimingers are brothers, the Havercrofts husband and wife, and the Loves father and son, and a single listing of each pair appears to have been made. This contention is sustained. Under the statute quoted and under the showing made, each was a shareholder and a member and under G.S. 1949, 17-1629, mentioned above, each was entitled to a vote. Without elaboration it may be said that only three votes were cast for the six memberships. The result is that of the 121 memberships first assumed, there must be deducted the French and Miller estates and there must be added three memberships of Eisiminger, Havercroft and Love. The net result is that the membership totaled 122 and that there must have been a vote of 82 in favor, in order that the proposition to increase the capital be adopted. Assuming that every vote cast in favor of the proposition be counted and that includes the French estate vote, the number was not sufficient. Appellees contend that Dellenbach should be counted as voting in favor of the increase. Dellenbach sent in a ballot properly signed and witnessed, but he made no cross on the ballot either for or against the proposition submitted. After the vote had been canvassed and the result had been announced and had been certified to the secretary of state, Dellenbach executed a writing, stating among other things that he signed his mail ballot, had his signature witnessed 'and fully thought that I had marked said ballot to approve the said proposed increase in the capital stock'; that it was his intention that the capital stock be increased and that he took 'this means' of notifying the corporation that such was his vote and that he ratified and acquiesced in the increase. The trial court permitted the writing to be introduced in evidence over objection but there is no means for determining whether the so-called ratification did or did not enter into the judgment. Appellees frankly admit they know of no authority whereby such a ratification may be had. It may be observed that if a voter may ratify a vote he never cast, then he may repudiate one he did cast by claiming that he erroneously marked his ballot. The casting of a ballot, even though a blank, is a finality. Results of an election are not to be altered or changed by any such means. We have no hesitancy in saying that the writing should not have been received nor considered. It may be observed that even if this ballot be counted as one for the adoption of the increase of capital, the vote would still be deficient.

"We find it unnecessary to discuss appellants' contention that certain mail ballots in favor of the proposition, which were signed by the voter but not witnessed, should be excluded."

INITIAL DECISION IN FEDERAL TRADE COMMISSION CASE AGAINST FLORIDA CITRUS MUTUAL

(In the Matter of Florida Citrus Mutual - Doc. No. 6074)

In an "Initial Decision," dated June 12, 1953, the Hearing Examiner entered an order dismissing the complaint against Florida Citrus Mutual, a nonprofit association, Lakeland, Florida, charging it with operating under a plan not within the exemption from the antitrust laws provided by the Capper-Volstead Act for growers marketing their products cooperatively and which violates the Federal Trade Commission Act governing unfair methods of competition. However, on June 24, 1953, counsel supporting the complaint gave notice of their intention to appeal to the Commission from this decision.

The complaint (set out in part in Summary No. 56, p. 6) alleged that pursuant to the plan under which the Florida Citrus Mutual operates it does not handle, buy or sell citrus fruits or citrus products, but (1) attempts to control the purchase and sale of citrus fruits and products and (2) regulates the prices at which these products are purchased and sold through contract arrangements with processors and handlers.

The hearing examiner held that reliable, probative and substantial evidence was not produced that would support a finding (1) that such acts and practices as charged existed, particularly since May 1952, and (2) therefore the conclusion must be reached that the violations charged in the complaint have not been in existence since the adoption of the new program by the organization prior to the issuance of the complaint.

"As to the acts and practices prior to May 1952, counsel for respondents admit the establishment of floor pricing, the proration of fresh fruit shipments, and the effort for a time to enforce these by mandatory action," the Hearing Examiner said. "For the purposes of this decision such admissions will be construed as admissions of violation of the Federal Trade Commission Act. It is unnecessary here, in view of the foregoing admissions, to make a determination as to whether the acts and practices of respondents prior to May 1952 constituted a violation of the Act."

The record shows that none of the attempts at price regulations had any perceptible effect upon consumer costs or upon the market in general, the Hearing Examiner continued. Since May 1952, the symptoms concomitant to monopolistic controls and restraint of trade have not been apparent, and the reliable, probative and substantial evidence in the record does not establish that there have been violations of the Federal Trade Commission Act by the respondents since that time.

Counsel in support of the complaint contend that the contrary is true, and refer particularly to clauses in the so-called handler contracts, but the contention is unsupported, he said.

These contracts, dating from 1949 or later, are for ten-year terms but subject to cancellations, he declared. By reason of such contractual provisions, Mutual has the power and has been and is in a position to issue rules and regulations controlling its contract handlers in respects which would affect interstate commerce and which would be violative of the Federal Trade Commission Act.

"The mere existence of power, however," Examiner Cox declared, "is not something against which the Federal Trade Commission proceeds, and the contracts go no further than to give Mutual a power which has not been exercised, so far as the record discloses at least since May 1952. It is unnecessary, under the assumptions herein adopted, to make a determination as to whether it was exercised prior to May 1952.

"The contracts do not themselves set prices or prescribe allotments of shipments. Since May 1952 there have been and are no Mutual rules or regulations which would establish a per se violation of the Federal Trade Commission Act or the antimonopoly acts, and no acts or practices which can be found to constitute a violation, in fact. Hence, as to that period, no justification for Federal Trade Commission action remains.

"It is agreed that even if Mutual had ceased all illegal practices since May 1952, that in itself does not require a dismissal of the complaint at this time. However, if the acts and practices have stopped and if the Commission has reason to believe that they will not be resumed, it may, in the public interest, dismiss the complaint without prejudice.

"The record shows that the acts and practices questioned were abandoned not because of Federal Trade Commission investigation but because of their economic futility, and that the abandonment was after thorough consideration and in good faith."

VALIDITY OF ARTIFICIAL BREEDERS ASSOCIATION CHARTER ISSUED UNDER GEORGIA COOPERATIVE MARKETING ACT

(Northeast Georgia Artificial Breeders Association v. Brown)

In Northeast Georgia Artificial Breeders Association v. Brown, 209 GA. 547, 74 S.E. 2d 660, the Supreme Court of Georgia held that the charter of plaintiff corporation, which was organized in accordance with the "Cooperative Marketing Act" as amended, Code Ann. Supp. §65-201, et seq., authorizing it to engage in artificial breeding of livestock, "is not void and of no effect, and the corporation was not without authority to engage in such business, or to employ and contract with agents to carry on the business of artificially inseminating cattle, since its charter expressly conferred upon it the power to do so." In reaching this

conclusion the court also referred to the provisions in Code Ann. Supp. §22-1881, that "A corporation not organized for pecuniary gain or profit and without capital stock, shall be incorporated under the 1938 Act, the same as a business corporation," and in the Corporation Act of 1938, as amended, Code Ann. Supp. §22-1828, that a corporation organized thereunder shall have authority "To exercise any and all powers stipulated in its charter not contrary to the Constitution and laws of the United States and of the State of Georgia."

PROSECUTION DISMISSED AGAINST RICE GROWERS ASSOCIATION OF CALIFORNIA

(U. S. v. Rice Growers Ass'n of California)

In U.S. v. Rice Growers Association of California, 110 F. Supp. 667, defendants, including Rice Growers Association of California, a cooperative corporation formed and existing under the laws of California, were indicted for having willfully and knowingly conspired together to defraud the United States and the Commodity Credit Corporation, an agency of the United States, in violation of 18 U.S.C. §371, and for having willfully and knowingly concealed by trick, scheme and device a material fact in a matter within the jurisdiction of Commodity Credit Corporation, in violation of 18 U.S.C. §1001. After the Government's evidence had been introduced, each of the defendants moved for a judgment of acquittal. The court reviewed the evidence, and held that it did not justify conviction. Accordingly, the motions for acquittal were granted.

RECENT COURT INTERPRETATIONS OF "AGRICULTURAL COMMODITIES" EXEMPTION IN INTERSTATE COMMERCE COMMISSION ACT

(ICC v. Wagner, 112 F. Supp. 109; ICC v. Allen E. Kroblin, Inc., _____F. Supp._____, 26 L.W. 2016)

In two recent decisions, it has been held that (1) "scoured wool" is an agricultural commodity, but garnetted wool and wool shoddy are not such commodities, and (2) New York dressed and eviscerated poultry is not a "manufactured product" but is an agricultural commodity, within the meaning of Section 203(b)(6) of the Interstate Commerce Commission Act. Under this section "agricultural commodities" may be transported by motor carriers without complying with Interstate Commerce Commission's certificate requirements. It is understood that Interstate Commerce Commission plans to appeal the latter decision.